

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JAMAL A. AZEEZ,

Petitioner,

v.

CIVIL ACTION NO. 5:15-cv-15225

STATE OF WEST VIRGINIA,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the Petitioner's *Petition for a Writ of Error Coram Nobis* (Document 2) filed on November 16, 2015, brought on the grounds that recently-discovered facts call his state conviction into question. By *Standing Order* (Document 3) entered on November 16, 2015, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On November 18, 2015, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (PF&R) (Document 5), wherein it is recommended that this Court deny the Petitioner's application to proceed without prepayment of fees or costs (Document 1),¹ dismiss the petition, and remove this matter from the Court's docket. On December 3, 2015, the Petitioner filed the *Petitioner's Objections to the Magistrate's Proposed Findings and Recommendations* (MPF&R) (Document 7). On December 14, 2015, the *Petitioner's Supplemental Objections to the "Magistrate's Proposed Findings and*

¹ The Petitioner filed a letter-form motion to proceed without prepayment of fees and costs on November 16, 2015. The clerk's office provided him with the appropriate forms, which he filed on December 3, 2015 (Document 6), after the Magistrate Judge had submitted the PF&R.

Recommendations" (MPF&R) (Document 8) were filed. On February 4, 2016, the Petitioner filed a letter, addressed to the Honorable David Faber, Senior District Judge for the Southern District of West Virginia, entitled *Requesting Assistance on a Wrongful Conviction* (Document 9), together with attachments. On February 23, 2016, the Petitioner filed an *Application for an Order on Objections to Magistrate's Proposed Findings and Recommendation* (Document 10). For the reasons stated herein, the Court finds that the Magistrate Judge's PF&R should be adopted and the Petitioner's objections overruled.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Magistrate Judge's PF&R sets forth the factual and procedural background of this case in detail. The Court hereby incorporates those factual findings, but, in order to provide context for the ruling contained herein, provides the following summary.

The history surrounding the Petitioner's state court conviction and subsequent appellate and habeas proceedings is long and convoluted. Only a brief summary is required here. The Petitioner was convicted of second degree sexual assault in the Circuit Court of Raleigh County, West Virginia, on July 31, 1987. On September 14, 1987, he was sentenced to ten to twenty years in prison. He appealed, and the West Virginia Supreme Court of Appeals denied his appeal on July 20, 1988. The Petitioner was later charged with failure to appear, related to his sexual assault sentence, and was convicted on March 25, 1993.

The Petitioner filed a state habeas petition challenging his sexual assault conviction on June 11, 1992. The Circuit Court denied the petition, and the West Virginia Supreme Court of Appeals affirmed in 1995. The West Virginia Supreme Court refused another habeas petition in 1996. The Petitioner then filed a state habeas petition challenging his failure to appear conviction, which was also denied. On May 24, 1996, the Petitioner filed a federal habeas petition challenging

his sexual assault conviction, which was dismissed. The Petitioner filed a federal habeas petition challenging his failure to appear conviction on June 19, 2000, and was granted relief as to that conviction on August 11, 2003. Both before and after his successful petition with respect to the failure to appear conviction, the Petitioner filed several additional unsuccessful state and federal habeas petitions. Following his release from prison, he filed several unsuccessful suits related to the allegedly wrongful conviction.

The Petitioner brought a petition for writ of error *coram nobis* in state court prior to bringing this federal action. The West Virginia Supreme Court affirmed the Raleigh County Circuit Court's denial of his petition on August 31, 2015. (State of West Virginia v. Azeez, No. 14-0951, August 31, 2015.) The Petitioner describes his instant federal petition as an "appeal" of the West Virginia Supreme Court's denial of his state petition. He continues to challenge previous rulings, and asserts that he recently discovered that some of the evidence and testimony used to obtain his sexual assault conviction was false. In addition, he claims that exculpatory evidence was not disclosed or presented.

STANDARD OF REVIEW

This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and

recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). When reviewing portions of the PF&R de novo, the Court will consider the fact that the Plaintiff is acting *pro se*, and his pleadings will be accorded liberal construction. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir.1978).

DISCUSSION

The Magistrate Judge recommends that the petition be dismissed, finding that “[a] Writ of Error *Coram Nobis*...may not be used to attack a state conviction” in federal court. (PF&R at 13.) The Petitioner’s lengthy objections focus primarily on the alleged bias of the Magistrate Judge and other officials and the underlying merits of his case. He asserts that his claim of actual innocence justifies relief that may be otherwise unavailable, and focuses on the fundamental character of the errors in his trial and conviction.

A federal writ of error *coram nobis* derives from the All Writs Act, 28 U.S.C. § 1651. It provides a limited avenue of relief in criminal cases where extraordinary circumstances compel its use, and where alternative remedies are not available. However, the federal writ of error *coram nobis* is available only in relation to federal convictions. *See, e.g., In re Egan*, 339 F. App'x 314, 315 (4th Cir. 2009) (unpublished) (“The writ of error coram nobis may not be used to set aside a state conviction.”); *In re Shelton*, 1 F. App'x 149, 149 (4th Cir. 2001)(unpublished) (finding no federal jurisdiction under § 1651 to alter a state court judgment). The Supreme Court has described *coram nobis* as “a belated extension of the original proceeding during which the error allegedly transpired.” *United States v. Denedo*, 556 U.S. 904, 913 (2009) (finding that a military court’s jurisdiction to issue the writ of *coram nobis* “derives from the earlier jurisdiction it exercised to

hear and determine the validity of the conviction on direct review"). Because the Petitioner challenges a state conviction, this Court lacks jurisdiction to entertain his petition for a writ of error *coram nobis*. Therefore, the Petitioner's objections must be overruled and the Magistrate Judge's PF&R adopted.

CONCLUSION

WHEREFORE, following thorough review and careful consideration, the Court **ORDERS** that Magistrate Judge VanDervort's *Proposed Findings and Recommendation* (Document 5) be **ADOPTED** and that the *Petitioner's Objections to the Magistrate's Proposed Findings and Recommendations (MPF&R)* (Document 7) and the *Petitioner's Supplemental Objections to the Magistrate's Proposed Findings and Recommendations* (MPF&R) (Document 8) be **OVERRULED**. The Court further **ORDERS** that the *Application for an Order on Objections to Magistrate's Proposed Findings and Recommendation* (Document 10) be **TERMINATED AS MOOT**. Finally, the Court **ORDERS** that the *Petition for a Writ of Error Coram Nobis* (Document 2) be **DISMISSED** and that the *Application to Proceed without Prepayment of Fees and Costs* (Documents 1 & 6) be **DENIED**.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to the Honorable Omar J. Aboulhosn, to counsel of record, and to any unrepresented party.

ENTER: March 18, 2016


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA